



U.S. Citizenship
and Immigration
Services

C1

FILE: [REDACTED]
WAC 03 147 54494

Office: CALIFORNIA SERVICE CENTER

Date: JAN 04 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an associate pastor. The director determined that the petitioner has not established that the beneficiary possessed the required two years membership in the denomination.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on April 6, 2004. The petitioner's appeal, dated June 3, 2004, was received by the service center on June 4, 2004, 59 days after the decision was issued. Accordingly, the appeal was untimely filed.

On appeal, counsel states that, because of a recent address change, the petitioner did not receive the director's Notice of Decision until May 15, 2004. Counsel submits a copy of a May 4, 2004 letter from the California Service Center, acknowledging receipt of the petitioner's request for a change of address and giving further instructions on the requirements to effect the change.

We note that the service center's acknowledgement of the change of address request is dated almost a month after the director issued his Notice of Decision. The notice was sent to the petitioner's address of record at the time the decision was rendered. We further note that a copy of the decision was also sent to the petitioner's counsel.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.